

I. BACKGROUND

As the Court has previously described the factual background of the case in detail in other opinions, it need not do so again for purposes of the present motion. See, e.g., 7/15/19 Op. (Dkt. 306) (denying Defendant Ford's motion for bond). In relevant part, a federal grand jury indicted Bell on eleven charges, including a drug-trafficking conspiracy, in violation of 21 U.S.C. § 846; a sex-trafficking conspiracy, in violation of 18 U.S.C. § 1594(c); and sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1591(a). See Superseding Indictment (Dkt. 98). According to the indictment, Bell acted as a leader, manager, and supervisor of the conspiracy. Id. It is alleged that Defendants distributed illegal narcotics to customers at the Victory Inn for use within rooms at the hotel. Id. Additionally, Defendants allegedly distributed these narcotics to sex-trafficking victims in order to control and coerce them into committing commercial sex acts at the Victory Inn and other locations. Id.

Eight unidentified adult victims of sex trafficking are referenced in the superseding indictment. Id. Bell believes that most, if not all, of these victims engaged in prostitution both before and after the dates of the alleged conspiracy, and he seeks leave to cross-examine them regarding their histories of prostitution. Mot. at 2–3. Acknowledging the general exclusion of evidence regarding a victim's sexual behavior under Federal Rule of Evidence 412(a), Bell has filed a pretrial motion seeking leave to introduce this evidence under one of the exceptions to the rule, as required under Rule 412(c). Id. Bell maintains that this evidence would impeach the victims' credibility by showing that they falsely accused Bell in order to shield themselves or another pimp from prosecution, or by showing that they breached their agreements with law enforcement not to engage in criminal activity. Id. at 8. Additionally, Bell seeks the Government's production of evidence relating to the victims' histories of prostitution. Id.

II. DISCUSSION

Applicable to civil and criminal proceedings involving alleged sexual misconduct, Rule 412 broadly prohibits the admission of evidence offered to prove “that a victim engaged in other sexual behavior,” or evidence offered to prove “a victim’s sexual predisposition.” Fed. R. Evid. 412(a). Rule 412 “aims to safeguard the alleged victim against the invasion of privacy, potential embarrassment and sexual stereotyping that is associated with public disclosure of intimate sexual details” and to “encourage[] victims of sexual misconduct to institute and to participate in legal proceedings against alleged offenders.” Fed. R. Evid. 412, Advisory Committee’s Note to 1994 Amendment. Rule 412 bars evidence of a victim’s sexual behavior whether it is offered as substantive evidence or for impeachment purposes. *Id.* The rule, however, does not protect all witnesses from introduction of evidence of their sexual behavior—rather, it applies only when “the person against whom the evidence is offered can reasonably be characterized as a ‘victim of alleged sexual misconduct.’” *Id.*

There is no dispute that Rule 412 governs Bell’s motion. Prosecutions of sex trafficking involve “‘alleged sexual misconduct,’ and evidence of a trafficking victim’s pre- or post-indictment involvement in prostitution implicates her ‘other sexual behavior’ or ‘sexual predisposition[.]’” *United States v. Haines*, 918 F.3d 694, 697 (9th Cir. 2019) (citation omitted). Thus, many circuits have applied Rule 412 in cases like this one, where a defendant charged with sex trafficking seeks to introduce evidence of a victim’s pre- and post-indictment acts of prostitution. *See, e.g., United States v. Mack*, 808 F.3d 1074, 1084 (6th Cir. 2015); *see also United States v. Lockhart*, 844 F.3d 501, 509 (5th Cir. 2016).

Rule 412’s exclusion of evidence of a victim’s sexual history is subject to three exceptions. The only exception relevant to the present motion is that set forth under Rule 412(b)(1)(C), for

to shield themselves from potential prosecution. Id. Third, because victims frequently enter into agreements with law enforcement providing for compensation, housing, or immunity in exchange for their agreement not to engage in criminal activity, Bell maintains that evidence that the victims violated these agreements by subsequently engaging in prostitution would impair their credibility. Id.

The Sixth Circuit squarely rejected Bell's first two arguments in United States v. Jackson, 627 F. App'x 460, 463–464 (6th Cir. 2015). In that case, the defendant argued that the district court erred by excluding evidence of two minor victims' histories of prostitution, as this evidence would have revealed the victims' motives to falsely accuse the defendant to avoid prosecution themselves or to shield their true pimp from prosecution. Id. at 462. In rejecting these arguments, the Sixth Circuit observed that the victims' motives for testifying were drawn out through other evidence—namely, the victims' admissions that they agreed to testify against the defendant in exchange for immunity from prosecution. Id. at 463. Additionally, the Government's interest in protecting the victims' privacy outweighed the defendant's Sixth Amendment interests, as the proposed lines of cross-examination strayed from “prototypical” forms of bias. Id. at 464. The Sixth Circuit agreed with the district court's assessment that the defendant's theory that the victims accused him in a calculated scheme to protect themselves and another pimp was “‘not a natural inference and appears to be based on little more than speculation.’” Id. (quoting United States v. Jackson, No. 1:13-CR-246, 2014 WL 1660062, at *2 (W.D. Mich. Apr. 25, 2014)). Given the “tenuous inferences” necessary to connect the victims' histories of prostitution to their alleged bias against the defendant, the Sixth Circuit found the Confrontation Clause implications to be negligible. Id.

declines to order the Government's production of any evidence it may have regarding the victims' pre- and post-indictment engagement in prostitution.

III. CONCLUSION

For the reasons stated above, Bell's motion is denied (Dkt. 419).

SO ORDERED.

Dated: May 26, 2021
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge